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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 JASON HULLINGER, *et al.*,

11
12 Plaintiffs,

13 v.

14 KUNAL ANAND, *et al.*,

15 Defendants.
16
17

Case No. CV 15-07185 SJO (FFMx)

PROTECTIVE ORDER

18 1. RECITALS

19 1.1 Purposes and Limitations. Discovery in this Action is likely to involve
20 production of confidential, proprietary, or private information for which special
21 protection from public disclosure and from use for any purpose other than
22 prosecuting this Action may be warranted. This Order does not confer blanket
23 protections on all disclosures or responses to discovery and the protection it affords
24 from public disclosure and use extends only to the limited information or items that
25 are entitled to confidential treatment under the applicable legal principles. As set
26 forth in Section 12.4, below, this Protective Order does not entitle anyone to file
27 confidential information under seal; Civil Local Rule 79-5 sets forth the procedure
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1 that must be followed and the standards that will be applied when a party seeks
2 permission from the court to file material under seal.

3 **2. DEFINITIONS**

4 2.1 Action: The case styled *Hullinger, et al. v. Anand, et al.*, Case No. 2:15-
5 cv-07185 in the U.S. District Court for the Central District of California.

6 2.2 Challenging Party: A Party that challenges the designation of
7 information or items under this order.

8 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c) , including confidential
11 business or financial information, information regarding confidential business
12 practices, or other confidential research, development, or commercial information
13 (including information implicating privacy rights of third parties), and information
14 which may be privileged or otherwise protected from disclosure under state or federal
15 statutes, court rules, case decisions, or common law.

16 2.4 Counsel: Outside Counsel of Record (as well as their support staff).

17 2.5 Designating Party: A Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.” A Party can also designate information or items produced by a
20 Non-Party as CONFIDENTIAL should the Non-Party’s information or items so
21 qualify.

22 2.6 Disclosure or Discovery Material: All items or information, regardless
23 of the medium or manner in which it is generated, stored or maintained (including
24 among other things, testimony, transcripts and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this manner.

26 2.7 Expert: A person, other than a party, with specialized knowledge or
27 experience in a matter pertinent to the Action who has been retained by a Party or its
28 counsel to serve as an expert witness or as a consultant in this Action.

1 2.8 Non-Party: Any natural person, partnership, corporation, association, or
 2 other legal entity not named as a Party to this Action necessary uses of such materials
 3 in preparation for and in the conduct of trial, to address their handling at the end of
 4 the litigation, and serve the ends of justice, a protective order for such information is
 5 justified in this matter. It is the intent of the parties that information will not be
 6 designated as confidential for tactical reasons and that nothing be so designated
 7 without a good faith belief that it has been maintained in a confidential, non-public
 8 manner, and there is good cause why it should not be part of the public record of this
 9 case.

10 2.9 Outside Counsel of Record: Attorneys who are not employees of a party
 11 to this Action but are retained to represent or advise a party to this Action and have
 12 appeared in this Action on behalf of that party or are affiliated with a law firm which
 13 has appeared on behalf of that party, and their support staff.

14 2.10 Party: Any party to this Action, including all of its officers, directors,
 15 employees, and Outside Counsel of Record and their support staffs.

16 2.11 Producing Party: A Party or Non-Party that produces Disclosure or
 17 Discovery Material in this Action.

18 2.12 Professional Vendors: Persons or entities that provide litigation support
 19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 20 demonstrations, and organizing, storing or retrieving data in any form or medium)
 21 and their employees and subcontractors.

22 2.13 Protected Material: Any Disclosure or Discovery Material that is
 23 designated as "CONFIDENTIAL."

24 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material
 25 from a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Order cover not only Protected Material (as
 28 defined above), but also (1) any information copied or extracted from Protected

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
 2 and (3) any testimony, conversations, or presentations by Parties or their Counsel that
 3 might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the
 5 trial judge. This Order does not govern the use of Protected Material at trial.

6 **4. DURATION**

7 Even after final disposition of this Action, the confidentiality obligations
 8 imposed by this Order shall remain in effect until a Designating Party agrees
 9 otherwise in writing or a court order otherwise directs. Final disposition shall be
 10 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
 11 or without prejudice; and (2) final judgment herein after the completion and
 12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 13 including the time limits for filing any motions or applications for extension of time
 14 pursuant to applicable law.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

17 Each Party or Non-Party that designates information or items for protection under
 18 this Order must take care to limit any such designation to specific material that
 19 qualifies under the appropriate standards. The Designating Party must designate for
 20 protection only those parts of material, documents, items, or oral or written
 21 communications that qualify so that other portions of the material, documents, items,
 22 or communications for which protection is not warranted are not swept unjustifiably
 23 within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
 25 that are shown to be clearly unjustified or that have been made for an improper
 26 purpose (e.g., to unnecessarily encumber the case development process or to impose
 27 unnecessary expenses and burdens on other parties) may expose the Designating
 28 Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
7 under this Order must be clearly so designated before the material is disclosed or
8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
14 contains protected material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents available for inspection
18 need not designate them for protection until after the inspecting Party has indicated
19 which documents it would like copied and produced. During the inspection and
20 before the designation, all of the material made available for inspection shall be
21 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
22 it wants copied and produced, the Producing Party must determine which documents,
23 or portions thereof, qualify for protection under this Order. Then, before producing
24 the specified documents, the Producing Party must affix the appropriate legend
25 ("CONFIDENTIAL" to each page that contains Protected Material). If only a
26 portion or portions of the material on a page qualifies for protection, the Producing
27 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
28 markings in the margins).

(b) for testimony given in depositions that the Designating Party, identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition is concluded) a right to have up to ten days to identify the specific portions of the testimony as to which protection is sought.

(c) for information produced in some form other than documentary and for any other tangible items, the Producing Party shall affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 In the event that parties are unable to resolve the dispute, the Challenging Party may request appropriate relief from the court. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or

impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the protection to which it is entitled pursuant to this Order until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is reasonably necessary for this Action, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.3(a) below, have been followed;

- 1 (d) the court and its personnel;
- 2 (e) court reporters and their staff;
- 3 (f) professional jury or trial consultants, mock jurors, and Professional
- 4 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 (g) the author or recipient of a document containing the information or a
- 7 custodian or other person who otherwise possessed or knew the information;
- 8 (h) the individuals that are named as a Party in this Action; and
- 9 (i) any mediator or settlement officer, and their supporting personnel,
- 10 mutually agreed upon by any of the parties engaged in settlement discussions.

11 7.3 Disclosure to Experts

12 (a) Unless otherwise ordered by the court or agreed to in writing by the

13 Designating Party, a Party that seeks to disclose to an Expert (as defined in this

14 Order) any information or item that has been designated CONFIDENTIAL first must

15 make a written request to the Designating Party that (1) identifies the general

16 categories of “CONFIDENTIAL” information that the Receiving Party seeks

17 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the

18 city and state of his or her primary residence, (3) attaches a copy of the Expert’s

19 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each

20 person or entity from whom the Expert has received compensation or funding for

21 work in his or her areas of expertise or to whom the expert has provided professional

22 services, including in connection with a litigation, at any time during the preceding

23 five years,¹ and (6) identifies (by name and number of the case, filing date, and

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25 ¹ If the Expert believes any of this information is subject to a confidentiality

26 obligation to a third-party, then the Expert should provide whatever information the

27 Expert believes can be disclosed without violating any confidentiality agreements,

28 and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 location of court) any litigation in connection with which the Expert has offered
2 expert testimony, including through a declaration, report, or testimony at a deposition
3 or trial, during the preceding five years.²

4 (b) A Party that makes a request and provides the information specified in the
5 preceding respective paragraphs may disclose the subject Protected Material to the
6 identified Expert unless, within 14 days of delivering the request, the Party receives a
7 written objection from the Designating Party. Any such objection must set forth in
8 detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with
10 the Designating Party (through direct voice to voice dialogue) to try to resolve the
11 matter by agreement within seven days of the written objection. If no agreement is
12 reached, the Party seeking to make the disclosure to the Expert may file a motion as
13 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
14 applicable) seeking permission from the court to do so. Any such motion must
15 describe the circumstances with specificity, set forth in detail the reasons why the
16 disclosure to the Expert is reasonably necessary, assess the risk of harm that the
17 disclosure would entail, and suggest any additional means that could be used to
18 reduce that risk. In addition, any such motion must be accompanied by a competent
19 declaration describing the parties' efforts to resolve the matter by agreement (i.e., the
20 extent and the content of the meet and confer discussions) and setting forth the
21 reasons advanced by the Designating Party for its refusal to approve the disclosure.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear
23 the burden of proving that the risk of harm that the disclosure would entail (under the
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26 ² It may be appropriate in certain circumstances to restrict the Expert from
27 undertaking certain limited work prior to the termination of the litigation that could
28 foreseeably result in an improper use of the Designating Party's "CONFIDENTIAL"
information.

1 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
2 Material to its Expert.

3 7.4 Use of Protected Material at Depositions. Protected Material may not
4 be disclosed or shown to a deponent during a deposition unless the Protected
5 Material is publicly available or has been previously produced in the course of
6 discovery prior to the deposition. Protected Materials may be disclosed or shown to
7 a deponent only if:

8 (1) Both:

9 (a) the Protected Material has been previously produced in the
10 course of discovery prior to the deposition and

11 (b) the deponent is a Producing Party or the author or recipient of
12 the document containing the information or a custodian or other person who
13 otherwise possessed or knew the information, or

14 (2) the deponent is an officer, director or corporate designee of the
15 Producing Party.

16 Use of Protected Materials during a deposition shall not in itself cause the loss
17 of its status as "CONFIDENTIAL." Should a person who is not authorized to
18 receive or review Protected Materials be present at a deposition, the unauthorized
19 person shall leave the deposition during the examination of a witness about Protected
20 Materials.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
22 **PRODUCED IN OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation
24 that compels disclosure of any information or items designated in this Action as
25 "CONFIDENTIAL" that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification
27 shall include a copy of the subpoena or court order;

28 (b) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the
 2 subpoena or order is subject to this Protective Order. Such notification shall include
 3 a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued
 5 by the Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with
 7 the subpoena or court order shall not produce any information designated in this
 8 Action as “CONFIDENTIAL” before a determination by the court unless the Party
 9 has obtained the Designating Party’s permission. The Designating Party shall bear
 10 the burden and expense of seeking protection in that court of its confidential material.
 11 Nothing in these provisions should be construed as authorizing or encouraging a
 12 Receiving Party in this Action to disobey a lawful directive from another court.

13 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 14 **PRODUCED IN THIS LITIGATION**

15 (a) The terms of this Order are applicable to information produced by a
 16 Non-Party in this Action and designated as “CONFIDENTIAL” Such information
 17 produced by Non-Parties in connection with this Action is protected by the remedies
 18 and relief provided by this Order. Nothing in these provisions should be construed as
 19 prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
 21 produce a Non-Party’s confidential information in its possession, and the Party is
 22 subject to an agreement with the Non-Party not to produce the Non-Party’s
 23 confidential information, then the Party shall:

24 1) promptly notify in writing the Requesting Party and the Non-Party
 25 that some or all of the information requested is subject to a confidentiality agreement
 26 with a Non-Party;

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2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The production of privileged, work product, or otherwise

protected documents or information shall not be deemed a waiver of the privilege, work product, or other protection or immunity from discovery by the Producing Party in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Seek Heightened Protection. This Order is without prejudice to the ability of any Party to seek heightened protection (such as an “Attorney’s Eyes Only” designation) upon a proper showing on an individualized basis.

12.2 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.3 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.4 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material

1 under seal is denied by the court, then the Receiving Party may file the information in
2 the public record unless otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

4 After the final disposition of this Action, as defined in Section 4, within 60
5 days of a written request by the Designating Party, each Receiving Party must return
6 all Protected Material to the Producing Party or destroy such material. As used in
7 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving
10 Party must submit a written certification to the Producing Party (and, if not the same
11 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
12 (by category, where appropriate) all the Protected Material that was returned or
13 destroyed and (2) affirms that the Receiving Party has not retained any copies,
14 abstracts, compilations, summaries or any other format reproducing or capturing any
15 of the Protected Material. Notwithstanding this provision, Counsel is entitled to
16 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
17 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
18 reports, attorney work product, and consultant and expert work product, even if such
19 materials contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Protective Order as set forth in
21 Section 4.

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1 **14.** Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.
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6 IT IS SO ORDERED.
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8 DATED: February 9, 2016

/s/ Frederick F. Mumm
FREDERICK F. MUMM
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name] declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Jason Hullinger, et al v. Kunal Anand, et al.* Case No. 2:15-cv-07185 SJO (FFMx). I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this Action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this Action or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____